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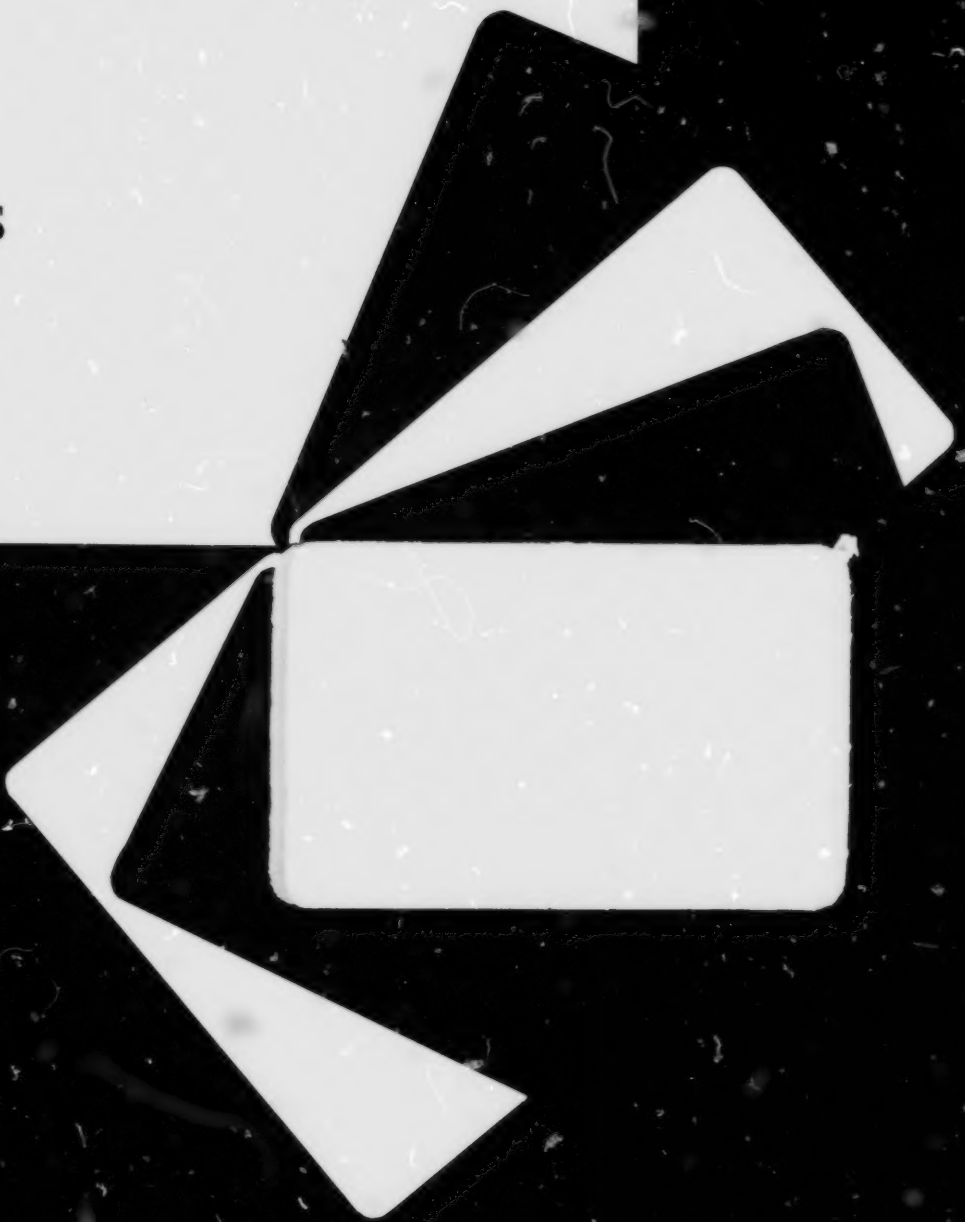

Ministry of the Solicitor General of Canada

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MEDIATION 1984
TRAINING, PROGRAM DEVELOPMENT, THE FUTURE

A National Workshop

June 15-17, 1984

No. 1985 - 1

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REPORT ON

M E D I A T I O N 1 9 8 4

TRAINING, PROGRAM DEVELOPMENT, THE FUTURE

A National Workshop
June 15 - 17, 1984
Toronto, Ontario

Report By

Ferne Burkhardt

Sponsored By

The Consultation Centre of the Solicitor General of Canada

and

The Justice Department

Coordinated By

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"Mediation or conflict resolution is an empty vessel; it can achieve all sorts of ends, positive and negative."

Paul Wahrhaftig

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Any errors appearing in this report are, of course, the sole responsibility of the author.

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1. General Information

1.1 Introduction

1.2 Synopsis of Proceedings and Issues

1.3 Common Assumptions and Conclusions

1.4 Critical Issues: Present and Future

"Because mediation is simple, it will tend to be undervalued in a system which usually prides itself on its complexity."

Jim Coflin

1. GENERAL INFORMATION

1.1 Introduction

Mediation programs are no longer new in Canada. The increase in the number and types of mediation activities in the past few years has been remarkable.

These programs share a common understanding of mediation as a third party working with parties in conflict. The mediator does not impose a decision, but rather helps the parties reach a mutually acceptable settlement by laying ground rules for interaction, aiding communication and exploring options for resolution. The applications of this process, however, vary widely.

Some programs attempt to deal with community problems such as neighbourhood disputes, property disputes, landlord/tenant disagreements, vandalism, break and entry and petty theft. Others work at family disputes including separation and divorce. Mediation can offer an alternative to laying charges, bringing an offender before the courts or incarcerating someone found guilty of an offence. It can provide an opportunity for victims to be heard and for victims and offenders to meet face to face.

Mediation programs already operate in all provinces. New ones continue to be proposed. Their structures, programs and training approaches vary. Some are sponsored by private bodies; others by government sources. Referrals come from persons within the legal system, from social agencies, the police and individual complainants. The common factor is the perception that these disputes can be handled more effectively and sometimes, but not always, more efficiently through informal mechanisms than through litigation.

Because of widespread interest and involvement in such programs, approximately 150 people gathered at York University, Toronto, Ontario, June 15 - 17 for a national workshop on mediation. They came from every

Canadian province and terrority and several American states. They represented a broad range of social agencies, community and church-related organizations and government institutions. There were judges, lawyers, police and probation officers; ministers, counsellors, professors and students; administrators, staff persons, board members and volunteers.

Several plenary sessions framed the core of the workshop which was devoted to four program areas - mediation skills, program development skills, mediation for young offenders and family mediation. The program tracks were designed to improve the mediation process by broadening the consciousness of practitioners and researchers, to sensitize and legitimize conflict resolution in both the public and private sectors and lay the foundation for on-going acitvities, including networking and future meetings.

The workshop also served as a market place to make known existing resources as well as a forum for identifying needs for additional resources.

This report records the workshop's proceedings in four sections. Following this first section which provides general information and an overview of the workshop, Section 2 outlines the backgound and planning process. Section 3 gives details on the program and Section 4 is a summary evaluation of the workshop by participants.

The appendices contain a list of selected resources, edited transcripts of major addresses, a list of the workshop Planning Team, a list of all participants including resource persons and a summary description of programs participants are engaged in.

1.2. Synopsis of Proceedings and Issues

The workshop attracted a diversity of persons from widely separated geographic areas who had one common interest - mediation. Among them were a significant number of young, qualified and very enthusiastic practitioners which would appear to warrant a mood of optimism, not only for the present, but also for the future of mediation in Canada.

Many reported that networking, the discovery of and interaction

between persons with experiences, frustrations and successes to share, was the most worthwhile aspect of the workshop.

A wealth of handouts, particularly in Track I, was available to participants in addition to the verbal exchange of information, viewpoints and dreams.

There was a marked differences in the mood of the sessions dominated by legal and other professional people. They expressed much greater caution where legal implications were somewhat nebulous and they were concerned that legal limits be determined. The community-based practitioners - many of whom were also professionals in other areas - wanted immediate answers to specific questions, practical skill training and hands-on material to help get the job done.

Because of the format of the workshop with its four themes each running on its own distinct and separate track and forming a unit by itself, resource persons and participants, with only a few exceptions, stayed with the same group. Although the agendas were different, there were several common assumptions and conclusions as well as recurring themes on present and future needs.

1.3. Common Assumptions and Conclusions

Mediation was commonly defined as an approach to conflict resolution in which an impartial third party intervenes in a dispute with the consent of the parties, to assist them in reaching a mutually satisfactory settlement to issues in dispute. Mediation uses a voluntary approach. It is not coercive. Disputants may choose mediation as an alternative and mediators facilitate the encounter but do not foist their own opinions or solutions on the dispute.

The handling of disputes to reduce tensions and hostilities is a very important aspect of mediation, even more important than resolving the dispute. Great value was placed on restoring relationships and on emotional healing by providing the opportunity to extend and receive forgiveness through mediation.

Mediators who are also trained in one or more related disciplines - social work, counselling, law - were regarded the most effective, but

persons who have developed "people handling" skills without formal academic training were consistently given high marks as good mediators.

On-going evaluation of a program is essential. Statistical information, whether or not it is seen as relevant by the program itself, is necessary for purposes of funding from government and other sources. In addition, those working within the program want to see documented the human values, the ethical and moral recoveries, which for them, spell out success.

Active community involvement is vital if a program is to succeed or even be launched outside of private practice mediation. Board members, staff, volunteers, some funding and certainly moral support need to be drawn from the community for a program to work and survive beyond the initial stages.

1.4. Critical Issues: Present and Future

A recurring theme was the need for public education. Although mediation programs have been mushrooming across the country, a much greater public awareness of what mediation is and what it is not, is needed. Negative stereotypes of offenders and the hostilities of victims need to be changed.

In addition, awareness needs to be raised in the minds of "system" people. Trained in an adversarial approach to conflict, where determining guilt and imposing a penalty is the norm, understanding and accepting mediation means a major philosophical shift. There needs to be more education for this group to overcome both their lack of awareness and their cynicism.

There also needs to be increased networking of existing programs so that programs in the earlier stages in particular can benefit from the experience of established ones. There is no need to reinvent the wheel. Mediation must move from experimentation to implementation.

Cooperation between government officials and mediation program directors needs to be improved. On the official side, there needs to be a curtailing of bureaucracy wherever possible and more flexibility,

allowing those close to the field more latitude. Practitioners, on the other hand, need to get beyond the perception of government as evil. They must recognize that government officials carry responsibility to the people along with the public purse and at least some "red tape" is unavoidable. Some standardization is required to move toward rectifying the "checkerboard" or uneven pattern to support nationally.

There is a particular lack of political will to support alternatives in some provinces. Overcrowding in prisons or alternative programs that are proven cost effective may provide the necessary incentive for greater cooperation.

The implications of the newly proclaimed Young Offenders Act need to be determined. For practitioners to work within the parameters of the law, there needs to be much greater clarity and agreement at the various levels.

Funding from government sources will be most available to those projects that are clearly defined and well researched, reflecting considerable consultation with the people who will be involved. Proposals to establish programs that may set a new policy direction for the government are not likely to receive funding.

2. Background and Planning Process

"It's time to get past the nebulous stuff of ten years ago. It's time to talk concretely."
Bob Ruttenberg

2. BACKGROUND AND PLANNING PROCESS

Canadian mediation programs have emerged somewhat independently, with persons involved in the scattered programs having little contact with or even awareness of each other. Thus a need has existed for opportunities for such people to meet and exchange information.

The first such workshop was held in 1981 in Saskatoon, Saskatchewan, co-sponsored by Mennonite Central Committee Canada and the Consultation Centre of the Solicitor General of Canada. This gathering was deliberately kept small (40 participants) to accomplish best its goals and to allow for meaningful interaction. The workshop was geared towards the mediation practitioner.

At that workshop, interest in maintaining some kind of network on a national basis was expressed. To planners, it was clear that further meetings should occur and that the agenda for a subsequent workshop must be focused and specific. The idea for Mediation 1984 emerged.

At the initiation of Community Justice Initiatives of Waterloo Region a Planning Team representing mediation programs, the Department of Justice and the Consultation Centre was convened in Toronto to explore interest in holding a national workshop on mediation prior to "IMPACT '84: The Citizen and the Criminal Justice System," an international conference to be held in Toronto June 1984. (See Appendix D for a list of the Planning Team.)

Discussion and parameters of the proposed workshop ranged from training for mediators to the much broader areas of conflict resolution embracing native concerns, race relations. Human rights, family conflict, labour relations and environmental disputes. Although there would be benefits to such a comprehensive orientation, the Planning Team decided a more limited focus would be more manageable.

The group decided to proceed to plan a national mediation workshop for June 15 - 17, 1984, immediately preceding IMPACT '84. This would allow some joint promotion, possibly sharing resource persons, and reduction of costs for persons attending both events.

3. Workshop Program

3.1 Overview

3.2 Plenaries

3.3 Track I, Mediation Skills

3.4 Track II, Program Development Skills

3.5 Track III, Mediation for Young Offenders

3.6 Track IV, Family Mediation

3.7 Interfaith Worship Service

3.8 Closing Plenary Session

"If the justice system can be confronted with a good idea that is supported, clear, and rational, it will adopt it."

Andrew Smith

"The system as it exists is designed to meet its own needs."

Dave Worth

3. WORKSHOP PROGRAM

3.1. Overview

The workshop was designed to provide four different program tracks which met simultaneously during the weekend. Participants registered for a specific track and thus were able to follow the various aspects of a particular theme throughout the workshop.

Resource persons used a variety of methods of presentation including audiovisuals, charts, role plays, lectures and team leadership. In most sessions questions and discussion were an important part of the format. Summaries of each program track highlighting some of the material presented and issues and questions raised appear in the following pages.

Two major addresses were presented in evening plenary sessions. A brief summary of each appears in Section 3.2 of this report. A fuller edited transcript of each address is found in Appendices B & C.

Other plenaries included an interfaith workship service and a wrap-up session, both of which will be reported on more fully in Sections 3.7 and 3.8.

Simultaneous translation was provided for the plenary sessions and for Track III, Mediation for Young Offenders. Plans for translation services in other program tracks were cancelled because the demand was too low to justify the cost.

Receptions were held both Friday and Saturday evenings following the formal program, allowing opportunity for informal interaction. A high level of participation and animated and extended conversations indicated keen interest in exchanging ideas and information on the many mediation efforts across the country.

3.2. Plenaries

3.2.1. "Building the Community's Justice System: Courts of First Resort"

by Ray Shonholtz

Ray Shonholtz is Executive Director of Community Boards Program in San Francisco, California, which he founded in 1977 and which now includes 22 neighbourhood conflict resolution programs. A lawyer with extensive experience in both civil and criminal law, Ray Shonholtz was director of a California task force of lawyers who worked on penal reform. He has also been a teacher of criminal law at the University of San Francisco.

"The vast majority of disputes entering the justice system walk right out of the justice system," stated Ray Shonholtz as he built a case for an approach to conflict resolution outside of the justice system.

A letter to "Dear Abby" describing an annoying neighbourhood dog problem that was escalating to the level of a serious conflict, and Abby's advice to the complainant to take the matter to the police department, epitomized for Shonholtz the social and justice problems common in this kind of conflict. Although a law had probably been broken, the authorities would not likely act to resolve the conflict. Shonholtz used this illustration as a launching point for his theme.

In San Francisco in 1983, less than one percent of 33 000 misdemeanor arrests actually went to trial. Very little attention was paid to the actual conflicts and their underlying causes.

"The effect of having laws where nothing happens, is to build frustration," said Shonholtz, adding that this situation builds up social tolerance in society to an intolerably high level. This is particularly true when the conflict is between former lovers, former roommates and former business partners. "The law was never intended to deal with the range of issues before most people on an everyday basis," he said. Shonholtz called for an early intervention system outside of the legal system to deal with petty annoyances which, if left unattended, escalate tensions and hostilities between persons, often leading to violent acts.

Getting disputants to articulate their perceptions of the conflict

and hearing the other person's perceptions of it begin to have an effect on what the truth of the situation is. Tensions and hostilities drop dramatically in the handling of the dispute. That, in Shonholtz's opinion, is primary; the resolution of the conflict is secondary.

The fact that the San Francisco legal system was seldom dealing with community conflict at either level led Shonholtz to the view that people from the neighbourhood could do no worse in attempting to hear conflict cases. He founded Community Boards Program, beginning with recruiting panelists (now called case developers) from the community. In addition to actually mediating conflicts, the project trains people in planning skills, evaluation skills, administrative skills and essentially sets up another justice model in the city. It works in communities that are highly diverse ethnically, racially and economically. The program does not compete with the existing judicial system, but rather works to prevent the need for such a system.

Community Boards Program works on the assumption that conflict has positive value, that lessons can be learned from conflict, that it can be expressed peacefully and resolved voluntarily. It is also relevant as a community education program.

Conflict mediation without going to a court or using lawyers needs to be rooted in a public policy that is supported in schools as well as in the community so that it is not simply a fad, according to Shonholtz. Mediators need to work in a professional manner without being professionals, he said.

"One of the greatest problems is the increased professionalization of conflict," he stated. Shonholtz conceded that sometimes professional intervention is necessary, but in the vast majority of cases it is not. The traditional justice system, he contends, should be the alternative because it is more coercive, more expensive, more alienating and more time consuming. Mediation within the community, on the other hand, without formal licencing schemes and a lot of regulations, should become a "part of our social fabric," a court of first resort.

*An edited transcript of Shonholtz's address is found in Appendix B.

3.2.2. "Putting Justice Back into the System"

Dave Worth

Dave Worth from Kitchener, Ontario, is the Director of Victim Offender Ministries for Mennonite Central Committee Canada. He is well-known in the Kitchener area as one of the founders of Victim Offender Reconciliation Program, Community Mediation Service and Victims Services. Worth frequently serves as a resource person to groups across Canada working on victim/offender and mediation concerns.

Dave Worth, who delivered the second plenary address, began with the assumption that we are living in an unjust world where there will always be injustice and conflict between persons. Although some people are working successfully at alternatives, others need to continue to work at new and creative reforms within the system.

"The system as it exists is designed to meet its own needs," said Worth. As a result, the needs of people who are touched by crime are not being met and the people are becoming disillusioned. Crime causes harm and when that hurt is not healed, hostilities increase. Crime shatters people's existence. "How do we restore hope?" asked Worth. "How do we help victims go on living?"

Victims are becoming increasingly vocal in their demands for justice. For too long their needs have not been met or even considered. Justice is not assured by applying the right rules. It is intimately and inextricably tied to human relationships, he said, adding that society must find ways to restore these relationships, to hear and answer the "why" questions inherent in the conflict situation. Bringing people face to face to listen and talk to each other about a conflict and reducing the level of tension and hostility through that discussion is a good starting point, according to Worth.

Bur we need to go beyond that point to actually meeting the needs of all the parties impacted by the conflict. Worth identified them as the offender, the victim, the community, the staff (within the justice system) and the state. All need to have their particular needs met if conflict is to be managed constructively. We need to find ways of speaking directly to victims. We need to provide for the offender a way to turn around and head in a positive direction. Court rooms

are no longer a community meeting place, so we need to find a new forum where people in the community that has been violated can express their opinions and their pain.

Staff, defined by law as peace officers, not law enforcement officers, need community encouragement to move in peace-making directions and to put a human face on crime. The state's need is to be perceived as being in control. (The state is also the only source of legal violence, Worth interjected.) By meeting people's needs, by providing answers and security, the state can better provide law and order, he concluded.

Worth then presented a case study of a sexual abuse situation with permission of the key figure involved and asked the audience to form clusters to decide on appropriate action in the case. Following this exercise, the entire group discussed possible creative options suggested by those present.

*An edited transcript of Worth's address is found in Appendix C.

3.3. Track I, Mediation Skills

Resource Person: Janet Rifkin, Director, Mediation Project
Amherst, Massachusetts

Albie Davis, Law-Related Education Coordinator
District Court Department, Salem, Massachusetts

Track I was designed to increase skills through further training. This was accomplished both by the presentations of the two resource persons who led all the sessions and by the exchange of experiences drawn from participants. Emphasis on skills training converged with examining ethical, moral and legal issues.

Workshop participants analyzed the skills required for mediation. In the first session, they were encouraged to examine their own strengths and weaknesses, to identify those that are most important and those which can serve as positive models.

Post-trial mediation with particular attention paid to the special issues and qualities of a good intake formed the thrust of the second session. Some of the issues touched on included neighbourhood conflict, landlord/tenant disputes, domestic violence and abuse, the use or threatened use of a weapon, involvement of police in the immediate situation and/or as a pattern. Participants endeavoured to determine in which kinds of cases and to what extent mediation is practical. It was pointed out that the mediation is not necessarily a failure even if no agreement is reached.

In the third session, the focus was primarily on handling power imbalance. Mediators should be selected carefully to reflect different ages, sexes, races and language and cultural values, advised the leaders. Participants were encouraged to identify typical difficult questions disputants ask mediators with the group corporately supplying good response models.

Mediating multi-cultural conflicts was the final topic discussed. Participants shared their experiences in mediating racial disputes.

Throughout the workshop, all particpants had opportunities to be actively involved in role playing and discussion which was the primary method of instruction. Workshop leaders provided scenarios which were acted on according to the basic mediation model outlined by the leaders. This model uses a team of mediators who work with the disputants in a series of encounters in a variety of combinations. Before meeting with disputants, mediators caucus to plan strategy. They get the story in a first meeting of the entire group. Later they meet with disputants individually, giving each the opportunity to express freely his/her perceptions of the conflict as well as emotional tensions, hostilities and expectations of the mediation. Mediators caucus privately a second time to evaluate the situation and finally, the entire group gathers again to work at a mutually acceptable agreement.

The following scenario of a role play enacted by several workshop participants was typical.

Scenario for the Role Play

Ronald Brown, 15, lives in Hamilton with his grandmother, Helen Brown, 48, who has raised him since his birth. Ronald's mother was fouteen when Ronald was born. She turned Ronald over to her mother, Helen, who acted as though he was her own child. A few years later, when she was 18, Ronald's mother married a United States citizen and moved to Michigan, She had three more children and is now living in a middle-class neighbourhood outside Detroit with her husband and children.

Ronald has been in and out of trouble for years. He seems bright, but he hasn't done well in school and last year he was placed in a school for emotionally disturbed youth. His grandmother says that he steals things from her and her friends. Recently, he took her car, without her permission, and drove it across the border into the United States. Helen Brown called the police and reported that Ronald had stolen her car. He was picked up by the border police and turned over to the Hamilton authorities. Rather then press charges, the police suggested mediation.

Several important points were brought out in the discussion which followed the demonstration mediation.

1. It is necessary to establish the basic facts of the immediate situation quickly and then try to discern the underlying, real problem.
2. Silence is the classic power tactic of the less powerful.
3. Disputants with more apparent power (those who are older, wealthier, more educated, etc.) tend to interrupt and to dominate.
4. The mediator needs infinite patience, must be able to build trust, must develop the ability to recognize cues and draw out his clients, pushing through openings to new insights and understanding.
5. Physical proximity of a mediator may help a disputant feel there is someone "on my side."

3.4. Track II, Program Development Skills

Resource Persons: Dave Gustafson, Coordinator, Victim Offender Reconciliation Project, Langley, BC

Bob Ruttenberg, Executive Director, John Howard Society of Saskatchewan

Dave Worth, Victim Offender Ministries Director, Mennonite Central Committee (Canada)

John Fisher, Institute for Non-Profit Organizations, Peterborough

Ray Shonholtz, Executive Director, Community Boards, San Francisco.

Track II provided guidelines in initial planning, in establishing the on-going process as the program develops, ways and means of broadening support including funding and moving from an experimental project to a second generation of programs.

In the first session Bob Ruttenberg and Dave Gustafson identified three basic models of programs with community-based and system-based approaches at opposite ends of a continuum and agency-based hybrids in between. Within these basic approaches exists a diversity of programs with a variety of goals and methods of operation.

Essential in early planning of any program is clarification of goals and assessment of local needs and resources, getting a conceptual sense and a time sense for the program. It is very important that the initiating or steering group be kept small with a common set of goals, and that there be a broader advisory group.

"Who is the program serving?" is a basic question that needs to be answered. Mediation may serve to decrease the pressure in the courts and cut costs there. (In the final analysis, cost efficiency may be a myth, Ruttenberg cautioned.) Mediation can serve the victim by giving him/her an opportunity to participate, to ask questions and receive answers which may lead to a change of attitude and a feeling of peace. It may also provide restitution of lost or damaged property. The offender may be helped by active participation, by seeing the victim as another human

being, by being allowed to receive forgiveness and by experiencing an alternative to incarceration.

Volunteers are important and can be most successfully recruited by personal contact. There should also be permanent staff of at least two persons to stablize the program. Heavy reliance on voluntary service can be deceptively costly and inefficient because adequate training is time consuming and expensive. It cannot be assumed that volunteers can move between tasks that require different skills on the strength of basic training. Training, however, should go beyond specific tasks to which volunteers have been assigned to include orientation to familiarize them with the broad philosophy of the program.

Evaluation is also essential to a successful program, but there are different kinds of evaluation. On one level, there is the statistical information required by government officials. More subjective evaluation of the quality of resolutions achieved and relationships restored cannot be neatly entered on a standard form, but is of equal or even greater importance. Evaluation that is done too early is not a fair test of a program.

Programs are generally most effective if there is a great deal of community ownership, with "community" meaning a group who shares common interests, and this may be geographical, within a church or a public interest group. This kind of involvement may be a totally new experience for people in the community and it may be one of the first opportunities that they have of truly building something rather than responding to something. It is important also to identify key persons in the criminal justice system within the community - at best, to acquire their support, and at worst, to develop strategy to neutralize their opposition.

Boards should reflect both non-professional community people and "system" people in spite of the risk that capable community non-professionals may be intimidated by system people. Clients can also serve on boards. They, too, need to feel ownership in the program and that staff is working "with" not "for" them.

In San Francisco, up to 25% of Community Boards Program board members are former clients.

It is important to create a separate body, apart from the board, whose sole responsibility is researching fund-raising options and putting them in motion. To get the best results - more volunteers, more commitment and more money - the program should have a paid coordinator, said John Fisher.

Fund raising, essential to the success of any program, in essence means trading the perceived value of the program for money. It should be approached as a long-term (three to five years) financial development plan following three basic steps which Fisher outlined.

Step one, the external survey, determines the community's needs and where support for the program can be found. Step two focuses on program planning and ensuring that the program meets those community needs. In step three, people are approached to become involved and fund-raising plans are put in place.

Fisher suggested games of chance, purchase of a commodity or service, social occasions, grants, the direct mail approach, charitable bequests in wills (deferred giving), life insurance proceeds (advanced giving), and cards at funeral homes (in memoriam giving) as fund-raising ideas. Plans should include encouraging regular weekly or monthly donations via an automatic chequing account where possible and asking a tax lawyer or chartered accountant to present a workshop on the tax advantages in making donations or bequests to charities. He cautioned that any risks in fund-raising events should be underwritten.

While many mediation programs are tied to other agencies or institutions, Ray Shonholtz contended that the organizations should be free standing; that is, not linked to some community advocacy organization or even a church. From his perspective and experience with Community Boards Program, he pointed out that problems can arise quickly unless there is a neutral forum for conflict resolution without ties to other organizations with

different goals and agendas. For example, funding for the parent organization and the subsidiary one can become tangled and competitive.

In the ideal situation, volunteers who have worked in a mediation program also begin to use the mediation process with people in their places of work and other places in direct resolution of conflict.

3.5. Track III, Mediation for Young Offenders

Resource Persons: Jim Coflin, Social Policy Coordinator
Solicitor General of Canada

Leith Hamilton, Department of Youth Protection
Ville Marie Social Services, Westmount, Quebec

Henry Grayman, Executive Director of Community
Sentencing Program, Belleville, Ontario

Cheryl Picard, former Executive Director of
Youth Alternate Society, Halifax, N.S.

Brenda Wisenthal, Coordinator of Entente Program
Pointe Claire, Quebec

Marie-France Desrosiers, Service de Readaption
Sociale, Quebec

Sharon Moyer, The Research Group, Toronto, Ontario

Conrad Sauve, YMCA, Montreal, Quebec

Andrew Smith, Regional Consultant (Prairies),
Solicitor General of Canada

Workshop participants expressed keen interest in the Young Offenders Act (YOA) which had just been proclaimed on April 1, 1984, and in the implications of this new act for mediation with young offenders. Program development and operations, government policy and funding, evaluation and community support in light of the new act were all considered.

Particular strategies for dealing with age and power differences and resistance to face-to-face meetings were also addressed.

It was noted that the YOA recognizes that youth need to face responsibility for their offenses. For some youth, it may be the first time they have been asked to face such responsibility. This objective of identifying someone who is guilty so that he can be made

to face such responsibility for his action is different from the goal of the mediation process. Mediation seeks to bring together offenders and victims who jointly seek a resolution acceptable to both. According to Jim Coflin, "the YOA itself may be antithetical to the process."

On the other hand, Section 4 of the YOA speaks of "alternative measures" and Article 20C specifically outlines several dispositions that describe mediation procedures. It states that mediation attempts (1) to pay back the victim for damages or losses or (2) to provide services in kind or (3) to give back the stolen property. This is the only reference to mediation in the YOA and nowhere in the law is it defined, giving any hint of the objective of resolving conflict or reducing tension.

It was apparent in the session that there is a great deal of confusion and uncertainty among officials as well as lay persons regarding the YOA. While it is a federal law, it is the provinces who implement it and they have discretionary powers. What changes in the system will result is yet to be determined.

While the impact of the YOA was somewhat nebulous, the importance of the community sensing its responsibility for its youth and becoming involved in the mediation process was clear. However, it was pointed out that sometimes community-based groups are given referrals and asked to perform a function without appropriate funds being granted. The lack of alternatives such as mediation programs in some areas coupled with uneven and inadequate funding creates a "checkerboard" effect across the country rather than a uniform degree of justice.

A slide presentation of the Youth Alternative Society in Halifax, Nova Scotia, provided one example of an effective program by a private non-profit organization. Public education and fund raising are key components in the program. Volunteers are trained to work with youth referred to the Society in lieu of the courts. Of the 48 percent of the young offenders referred to the society, fewer than 4 percent committed additional offenses and under 1 percent failed to carry out the agreed upon restitution such as Community

Service Orders.

The Solicitor General of Canada is suggesting that more information on community-based programs is essential. It commissioned The Research Group to compile monitoring forms which could be used on a national basis to achieve some degree of standardization in program evaluation and for funding purposes. "A draft guide to self-evaluation for community-based programs for young offenders" was presented by its writer, Sharon Moyer.

Federal representatives tended to defend the importance of data collection and Moyer presented the process as a benefit first of all to program operators. Workshop participants, who received the document at the outset of the session and had not had the opportunity to study it in advance, however, did not register great enthusiasm for such a monitoring device which would require considerable and consistent record-keeping.

In the final session, it was again stressed that if mediation is to succeed, issues must be faced within the community rather than relying on thejudicial system. There must also be greater cooperation between the official system and community-based agencies. The dissemination of information was seen as a key factor to educate the community with the emphasis on ethical and human values as opposed to statistical and analytical data.

Andrew Smith challenged the notion of seeing the "government as evil," stating that it would be willing to adopt "good ideas" that are clearly defined, supported and rational. He added that the government wants to see more control lodged in the community and that the task now needs to move from experimentation to implementation.

3.6. Track IV, Family Mediation

Resource Persons: Robert L. McWhinney, McWhinney Metcalfe & Associates, Toronto, Ontario

Judge Carol M.Huddart, County Court of Vancouver

Professor Howard Irving, School of Social Work, University of Toronto, Ontario

Resa Eisen, Private Practice, Toronto, Ontario

John Goodwin, Lawyer, Stapells & Sewell; past president, Ontario Association for Family Mediation

Andre Murray, Lawyer, Family Conciliation Services, Supreme Court Montreal, Quebec

Dr. Mario Bartoletti, Private Practice, Toronto, president, Ontario Association for Family Mediation

Mollie Knowles, Family Referral Conciliation Services, Kingston, Ontario

This workshop track was added to the original criminal justice orientation for the workshop in response to requests for discussion on divorce and separation mediation. It was organized by the Ontario Association for Family Mediation along with workshop coordinators. Each session featured presenters followed by questions from participants and discussion.

Most of the participants in this workshop were professional persons representing legal, academic, or counselling backgrounds, or agencies that deal with families in conflict.

The workshop provided an overview of recent and rapid changes in Family Law, including interspousal contracts, matrimonial and property legislation and it also reviewed the current thrust of family mediation on the Canadian scene.

There are new initiatives in the field. One is the founding of Family Mediation Canada with Professor Howard Irving of the University of Toronto as president. Initial information and an inventory of persons in family mediation is being compiled. Local and regional meetings are planned to lead up to a conference.

Training for family mediators, still in the infant stage, is starting to develop, ranging from basic training offered in Halifax, Nova Scotia, under the direction of Joyce Halpern, executive director of the Association for Family Life, to a post masters level course in Montreal taught by lawyer Andre Murray of the Family Conciliation Service of the Supreme Court. Other places where training is available are the University of Toronto and the Justice Institute of British Columbia. Dr. Mario Bartoletti is providing supervised internship experiences in mediation and assessment within his private practice in Toronto. A paper on the subject is scheduled for publication in 1985.

Until recently family mediation was not high in the awareness of the legal or judiciary systems, unlike labour relations, child

welfare or environmental issues. Mediation is viewed with apprehension by many legal professionals because it does not fall within the traditional legal approach. It removes the resolution process from the direct control of the lawyer and places it with the client. Mediation falls outside of the adversarial approach common to legal encounters generally.

Mediation is also not therapy, but elements of therapy are often present. Private practitioners, family service agencies or court-related services may be involved separately or in collaboration in its delivery. Mediation is seen as not just the territory of mental health or law, but as a conjoint domain providing better alternatives for all concerned. Recent research in the United States determined that the rate of dispute settlement shows no significant difference whether mediated by lawyers, social workers, psychologists or mediators. Often the dispute is not so much a legal one as an emotional one.

Other questions in family mediation concern confidentiality, impartiality, standards and ethics, qualifications of mediators, the team approach and who pays. Whether or not independent legal representation is required is also still being debated. A point of agreement was that the mediator is responsible to keep the process moving, while the client determines <u>where</u> the process goes.

Funding is another tangled area. Laws are made federally, but implemented in the provinces. Models of how mediation is financed vary from one area to another. While both levels of government support mediation, the ambiguity around funding remains. The Department of Justice has plans to fund research on various delivery models and although funding education initiatives traditionally lies within the Ministry of Health and Education, the Department of Justice has a potential for funding public education initiatives both through television advertisements and print media.

In the final session Susan Campbell outlined the three-year initiative of the Department of Justice ending in FY 1986 - 87 which allocated funding for Family Mediation Canada and for experimental piolt projects. Terms and conditions for funding these pilot projects

are being finalized. She suggested that anyone applying for funding should think carefully in advance about how, at the end of the three years, work on the project can continue.

The issues of need for public legal education and for training mediators were also raised.

Future developments in the field of family mediation are anticipated within the context of the new national association, Family Mediation Canada.

3.7. Interfaith Worship Service

An hour of inspiration and reflection took place Sunday morning. The interfaith worship service planned and led by David Gustafson included readings, music, liturgical dance and a homily on the theme of Shalom prepared for Mediation 1984 by Gustafson.

The ancient Jewish word Shalom expressed many dimensions and nuances including wholeness, integrity, well-being, harmony, right relationships and sacrificial functioning of all the elements of the created order, said Gustafson. He saw in the biblical view of justice the basis for personal encounter. This view, he said, "accepts the reality of conflict and surrounds the disputants with others who remind them of their covenant relatioship and provide them with structures whereby their conflict can be mediated, harm repaired, and the disputants reconciled to one another once again."

Gustafson expressed the hope that "the current ground swell of concern for mediation and reconciliation" was not just springing from "the need to be in the forefront of what is new," but rather, that it indicated "a renaissance and a reworking of the ancient dream of Shalom as it is applied to our own relationships in our own neighbourhoods, in our own societies, our own nations."

3.8. Closing Session, "The Future: Possibilities and Pitfalls

Moderators: Dean Peachey, Coordinator, Community Mediation Service
Kitchener, Ontario

Andrew Smith, Regional Consultant (Prairies),
Solicitor General of Canada

Discussant: Christopher Nuttal, Assistant Deputy Solicitor General

At the closing plenary session for Tracks I, II and III, a panel of two government officials and the workshop coordinator was on hand to respond to issues and questions raised by participants and to hear their particular views, reflections and expectations on the future of mediation on a regional, national and international basis.

In his opening statement, Andrew Smith commented on the multiplicity of programs and the challenge of defining standards and procedures to provide a unified framework. He said also that one of the current major debates is about mediation strategies, as to whether they can play a part in resolving the persistent problems within the criminal justice system - problems of efficiency, cost, labelling of a person proceeding through the system - or work best outside the system in community-based agencies where they work not for the criminal justice system but for the welfare of the community.

Dean Peachey also noted the broad range and variety of programs operating across the country and represented at the workshop. He urged participants to reflect on their ultimate goals and reasons for working in this field.

"What's the broader vision? What's at the core of what we are all about?" Peachey asked. He said his own vision keeps evolving as the concept of mediation continues to be applied to new situations.

In general terms, the issue is one of quality of life, and a better quality of life can be achieved by taking the criminal justice system back to the community, according to Christopher Nuttal. The community itself needs to be involved in social control, with a reduction of crime a likely spin-off.

One specific illustration of where that could begin to happen

is with Native people. In the future the govenment will need to exercise greater sensitivity in applying traditional law and employ more Native people as special constables, court workers and justices of the peace. Mediation is an appropriate action here since it is inherent in Native culture.

Workshops for training trainers of volunteers were called for in the future. We've become accustomed to relying on experts, commented a participant from Manitoba, when average community members often have exactly the right skills to expedite a community service such as mediation. They need to be convinced that they in fact do have the expertise. Providing non-professional training to build their confidence and develop their skills is essential.

Paul Wharhaftig, president of the Conflict Resolution Centre in Pittsburgh, Pennsylvania observed that there is a great ferment throughout the English-speaking world on the subject of mediation. The same kinds of questions asked at this workshop arise also in the United States and England and are beginning to emerge in South Africa and Australia.

Within Canada, there is a great multiplicity of programs with widely diverging goals and methods of operation. Mediation was compared to an empty vessel which can be used to achieve all sorts of things, both positive and negative. Andrew Smith stressed the importance of seeking commonalities such as seeing mediation as non-coercive and building on them. This was a more positive approach than continuing the debate on the relative merits or lack of them in programs within the justice system and those based in the community.

One suggestion for the future was to have separate conferences or workshops for different kinds of programs so the agendas could be focused more specifically. Another participant challenged that idea noting the importance of cross-fertilization of insights and experience from a variety of mediation programs.

Dean Peachey proposed a more formalized networking for the future, introducing a plan which he called "Initiatives: A Network for Community Justice and Conflict Resolution." He explained that

the shape of the network would be determined by the information submitted by members rather than simply being dispensed from the Kitchener Resource Centre where Initiatives would be lodged.

A survey and membership application form was circulated to provide an opportunity for persons interested in community-based justice and conflict resolution to become part of the network for information exchange on dispute resolution, victim offender reconciliation and victims services.

4. Workshop Evaluation

"Mediation may be simple but getting the process going is not."
Jim Coflin

4. WORKSHOP EVALUATION

Approximately 30 percent of particpants completed an evaluation form at the close of the workshop. The form elected both open-ended comments and specific ratings of the various workshop components.

The general response was positive to most aspects of the workshop. Many participants commented enthusiastically on the opportunity to confer informally with others from many kinds of programs and from many geographic areas. A few found the diversity too broad and confusing. Several indicated that the workshop should have been longer with more time during the day for longer workshop sessions and with some opportunity to move between tracks. Some people suggested one free evening so persons from outside the area could see the local sights. The informal evening social events were well received.

Some participants found the workshop presentations "very practical" while others said they were "too tutorial" with not enough opportunity for discussion and in-put from other participants. The formal lecture hall setting increased the problem in Track III. Several peole felt the presentations were out of focus or off the target as outlined in the program. "Family mediation" was judged a misnomer; "Divorce and separation mediation" would have been more accurate. Some of the material, particularly on the implications of the YOA, was considered "too vague" with a "lot of unknowns."

The low cost of the workshop was greatly appreciated with university accommodations considered adequate in general, but logistical problems at York in particular were a source of aggravation.

The follwoing ratings on several aspects of the workshop are based on a five-point scale with five being the most interesting, relevant, positive or useful. The number in parenthesis indicates the number of persons responding in each specific category.

Ratings

Areas	How Interesting	How Relevant
Plenaries (41)	4.1	4.1
Track I (8)	4.8	4.6
Track II (13)	3.5	3.2
Track III (15)	3.7	3.3
Track IV (6)	4.3	4.2

Areas	Positive/Useful
Overall (41)	4.2
Advance Information (37)	4.3
Free Time (40)	3.4

Comments

"Very well organized and informative."

"I was surprised how far some of the people travelled to attend the conference."

"The plenary sessions ... helped to put the workshop and the conference in perspective."

"Very professionally done; the role plays were excellent for my needs."

"Very tutorial rather than sharing of program ideas from participants."

"I would have liked to hear more from individuals as to how they began their programs."

"The diversity of resource people (was) a real plus."

"Some questions on funding were not answered well for mediation programs."

"We could have used at least two more days."

"I would have like more time in individual workshops plus a mix with other workshop areas."

"Please not York! I got lost at times."

"Well worth the money."

5. Appendices

Appendix A: Selected Resources

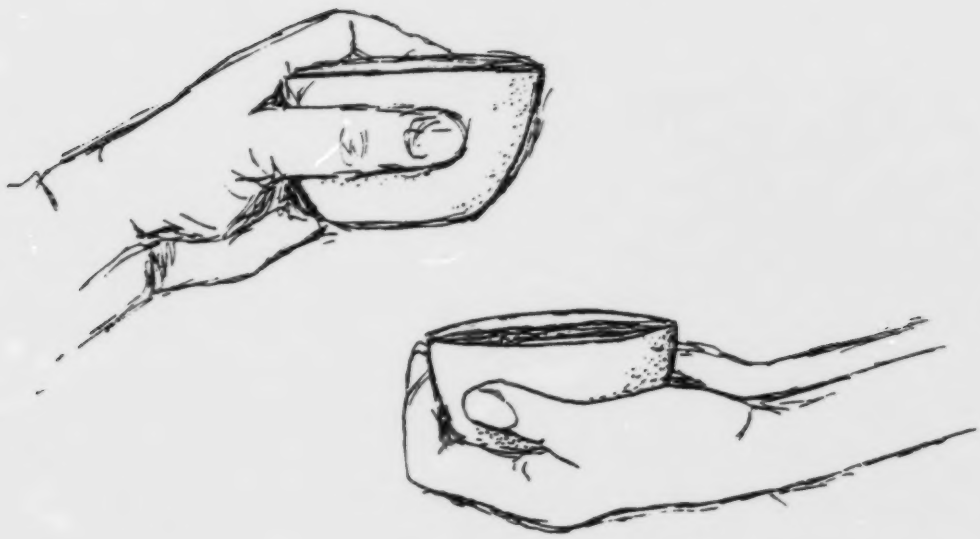
Appendix B: "Building the Community's Justice System: Courts of First Resort" by Ray Shonholtz

Appendix C: "Putting Justice Back Into the System" by Dave Worth

Appendix D: Workshop Planning Team

Appendix E: Participants

Appendix F: Summary of Participating Programs



"Educating the community on mediation is a prerequisite to their support."
Susan Ross

APPENDIX A

SELECTED RESOURCES

Printed

American Bar Association. Dispute Resolution Program 1983 Directory. 1800 M Street N.W., Washington, D. C. 20036.

Aspler, Carl. Restitution and Mediation in Corrections. Scarborough, ON: Community Support Services Branch, Ontario Ministry of Correctional Services.

Auvine, Brian, Betsy Densmore, Mary Extrom, Scott Poole and Michael Shanklin. A Manual for Group Facilitators. The Centre for Conflict Resolution, 731 State Street, Madison, Wisconsin 53703.

Buzzard, Lynn Robert and Ron Kraybill. Mediation: A Reader. Christian Legal Society, P. O. Box 2069, Oak Park, IL 60303, 1980.

Community Kit for the Development of an Adult Diversion Program. Ottawa: Solicitor General of Canada, 1979.

Felstiner, William and Lynne Williams. "Mediation as an Alternative to Criminal Prosecution: Ideology and Limitations:" Law and Human Behavior, 2, pp. 223 - 244, 1978.

Florida State Courts Administrator. Citizen Dispute Settlement Guideline Manual. Available through office of State Courts Administrator, Supreme Court Building, Tallahassee, FL 32304.

Levdansky, Deidre. Fundamentals of Mediating Disputes: A Manual on Mediation Training. Pittsburgh Mediation Centre, P.O. Box 8284, Pittsburgh, PA 15218

McGillis, Daniel and Joan Mullen. Neighbourhood Justice Centers: An Analysis of Potential Models. U.W. Department of Justice, U.S. Government Printing Office, Washington, DC 20402, Stock No. 027-000-00598-5, 1977.

McMullen, Lorie. The Board Staff Workbook. #418 Fifth Street Place, 10010-105 Street, Edmonton, AB. T5J 1C4

Peachey, Dean E., Brian Snyder and Alan Teichroeb. Mediation Primer: A Training Guide for Mediators in the Criminal Justice System. Community Justice Initiatives of Waterloo Region, 298 Frederick St., Kitchener, ON N2H 2N5

Appendix A

Program Guide for Victim Offender Reconciliation Project and Community Mediation Service. CJI, 298 Frederick Street, Kitchener, ON N2H 2N5

Sander, Frank E. A. and Frederick E. Snyder. Alternative Methods of Dispute Settlement: A Selected Bibliography. American Bar Association, 1800 M Street, N.W., Washington, DC, 1982.

Steps in Planning a diversion Program for your Community. British Columbia: Regional Consultation Centre, Solicitor General Canada.

The VORP Book: An Organizational and Operations Manual. PACT Institute of Justice, 106 N. Franklin, Valparaiso, IN 46383.

Zehr, Howard and Kathy Makinen. Victim-Offender Reconciliation Program Volunteer Handbook. Elkhart County PACT, 115½ West Cleveland Avenue, Elkhart, IN 46514, 1980.

Zehr, Howard. Mediating the Victim-Offender Conflict. Elkhart County PACT, 115½ West Cleveland Avenue, Elkhart, IN 46514.

Newsletters

Accord. Published five times a year by Mennonite Central Committee Canada for Victim Offender Ministry, 50 Kent Avenue, Kitchener, ON N2C 3R1.

Special Committee on Dispute Resolution Newsletter. American Bar Association, 1800 M Street, N.W. Washington, DC 20036.

Community Justice Report. Published quarterly by Community Justice Initiatives of Waterloo Region, 298 Frederick Street, Kitchener, ON N2H 2N5.

Conflict Resolution Notes. Published quarterly by the Conflict Resolution Centre, 7514 Kensington Street, Pittsburgh, PA 15221.

Issue 29: Crime and Justice. Published by the Division of Mission in Canada of the United Church of Canada, Research and Coalitions, 6th Floor, 85 St. Clair Avenue East, Toronto, ON M4T 1M8.

OAFM Newsletter. Published quarterly by Ontario Association for Family Mediation, Suite 14, P.O. Box 2213, Postal Station "P", Toronto, ON M5S 2T2.

The New York Mediator Newsletter. Published by the Community Dispute Resolution Centers Program of the Unified Court System, Agency Building 4, 10th Floor, Empire State Plaza, Albany, NY 12223.

VORP Network News. Published quarterly by the National VORP Resource Center, 106 N. Franklin, Valparaiso, IN 46383.

Appendix A
Videotapes

The videotapes listed below were produced by Community Justice Initiatives. All videotapes are available on 3/4-inch and 1/2-inch VHS video cassette. Normal loan period is for two weeks. There is a $25.00 rental fee per tape.

Community Mediation Service. This is a 15-minute documentary of the background and operations of CMS. It includes scenes from a mediation hearing, interviews with program staff and narration.

VORP Mediation Skills. This tape shows three situations in the VORP process: (1) Volunteer interviewing victims of house break-in to obtain their consent to participate in mediation; (2) Victim-offender mediation involving an offence of vandalism; (3) Victim -offender mediation involving a break-in to a small business.

Available with user's manual. Approximately 25 minutes.

Victim Offender Reconciliation in Kitchener. A description tape which explains the philosophy, history and on-going operation of the VORP Program in Kitchener. Includes interviews with judiciary, corrections, program developers and staff, and victims and offenders who have participated in the program. 22 minutes.

Slide Cassette Presentations

Crime: The Broken Community. A 12-minute slide-cassette presentation providing a rationale for VORP. Available from Mennonite Central Committee, 50 Kent Avenue, Kitchener, ON N2G 3R1.

Crime: Mediating the Conflict. An 11-minute slide-cassette presentation which focuses on VORP by following a case through the process. Available from Mennonite Central Committee, 50 Kent Avenue, Kitchener, ON N2G 3R1.

Resource Centres and Technical Assistance

Community Justice Resource Centre, 298 Frederick Street, Kitchener, ON N2H 2N5. Telephone (519) 744-6549. The Resource Centre has materials on dispute resolution, victim-offender reconciliation, and victim/witness assistance. Operated by Community Justice Initiatives of Waterloo Region, it serves as a clearinghouse for exchanging information among individuals and groups across Canada.

You are invited to share materials that you have, or ideas about what you would like to see included in the centre.

Appendix A

Consultation Centre. Solictor General of Canada

The Consultation Centre operates five Regional offices:

Atlantic Provinces
Don Stote, Regional Consultant
Box 549
Moncton, NB E1C 1H2
(506) 388-6368

British Columbia
Carlos Charles, Regional Consultant
Suite 1320
800 Burrard Street
Vancouver, BC V6Z 2J5
(604) 666-5307

Prairies
Andrew Smith, Regional Consultant
Cumberland Square
E28 - 1501 8th Street East
Saskatoon, Saskatchewan S7H 5J6
(306) 665-4262

Ontario
Cliadhna McMullan, Regional Consultant
Suite 12A - 8
2 St. Claire Avenue West
Toronto, ON M4V 1L5
(416) 966-8107

Quebec
Odette Graville-Cunberry, Regional Consultant
Suite 208
666 Sherbrooke Street West
Montreal, PQ H3A 1E7
(514) 283-7362

Copies of the Solicitor General publications are generally available from the regional Consultation offices. In addition, the Consultation Centre can provide a wide range of assistance ranging from program planning to funding.

Community Board Center for Policy and Training, 149 Ninth Street, San Francisco, CA 94103. Telephone: (415) 552-1250. Ray Shonholtz, Director. Community Board Center provides training, program development assistance and a newsletter.

Mennonite Conciliation Services, Box M, Akron, PA 17501. Telephone: (717) 859-1151. Ron Kraybill, Director. This centre offers resource materials, consulting, and training. While servicing a variety of groups, the primary orientation is towards community, church, and other grassroots organizations.

Appendix A

National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850
NCJRS distributes a monthy update of current materials, "Selective Notice of Information" (annual subscription $5.00 U.S.) In addition a request for information on neighbourhood justice centres will generally produce a wealth of free materials, including some of the items listed above.

Special Committee on the Resolution of Minor Disputes, 1800 M Street, N.W., Washington, DC 20036. Telephone: (202) 331-2258. Larry Ray, Director. Sponsored by the American Bar Association, the Special Committee operates a clearinghouse with a large collection of resource materials on pre-trial mediation.

APPENDIX B

BUILDING THE COMMUNITY'S JUSTICE SYSTEM:

COURTS OF FIRST RESORT

by Ray Shonholtz

It's an honour to be at a conference put together by Canadians and it's a pleasure to be here to open the confernece. I would like to cover a bit of the work of Community Boards in San Francisco and the work we are doing throughout the country in seven or eight cities and several Indian tribes.

I'll start off with a "Dear Abby" article because I thought it really reflected a lot of the important parts of conciliation work, sometimes referred to as mediation work. I think it epitomizes both social problems and justice problems in just about every industrial city in the West. It says:

> Dear Abby:
>
> My neighbour has two enormous dogs that she keeps in her house most of the time but when she lets them out to do their business, they head straight for my lawn and unload like a pair of elephants. We had some angry words about this two years ago and haven't spoken since. I called the police department to complain and I also called the dog pound but nothing was done about it. I am going through the menopause and when I get nervous my blood pressure shoots up. I'm afraid I'll have a stroke if something isn't done. I would hate to kill those dogs, but I just can't take it anymore. Please advise. *Dog-Tired in Pennsylvania.*
>
> Dear Dog-tired in Pennsylvania:
>
> The dogs are not to blame so please don't take it out on them. You don't say where you live but in most communities, your neighbour would be in violation of the law and fined. Call your police department again and register a formal complaint. Be sure to give your name so the police will have a record of your complaints. If nothing is done, buy a pooper scooper (most hardware stores sell them), and after the dogs have decorated your lawn, scoop the mess up and deposit it on your neighbour's lawn. Short of fencing your property, which is costly, the above suggestion seems most humane.

The reason I think this article is really appropriate is that it touches on a variety of needs for another approach to the resoltuion of conflict in places where people live together, particularly in urban areas, but also

where people know one another, in small communities, small Indian tribes, small settlements, where people, in fact, have a lot of interaction.

What this represents to me, particularly as one who has done a lot of criminal cases, is a direct exploitation of conflict. What Dear Abby is advising this person to do is to have the police department take care of the matter, to export the conflict because it's a violation of law. This woman (who has complained numerous times) is probably a statistic in that police department. The effect of having laws where nothing happens is to build frustration.

I think we force people in communities to have unreasonably high tolerance levels for social dissidence. Last year in San Francisco seven people got killed over parking and in New York City 14 people. The vast majority of homicides and felonious assaults in the United States, certainly in Western Europe and, I think, in Canada are not between strangers, but between people who know one another. They are between former lovers, former roommates and former business partners. Those are the three categories. If you are married to the person you work with and you live with that person, you may well be an endangered species. The problem isn't that the law is ineffectual; rather, the law was never intended to deal with the range of issues that come before most people on an everyday basis.

Most people need some early resolution of conflict. Some early intervention mechanism to de-escalate the tensions and hostilities that are in the conflict. It's a serious question, however, whether one needs a formal adjudicatory process that has lawyers as representatives of disputants. And the proof of that, certainly in the United States, and my guess would be the same applies in Canada, is that the majority of disputes entering the justice systems walk right out of the justice system.

San Francisco is a good example, but the percentages don't change for any urban area in the United States. San Francisco police department last year made about 33 000 misdemeanor arrests, and of those 33 000, only 23 000 were filed on by the prosecutor. Of the 23 000, approximately 40% were dismissed the first time anybody walked into court. The remainder, in fact, were plea bargained out. Less than 1% went to trial and more people skipped their trial than went to trial. The effect of

that is, that very little attention is actually being paid to that underlying conflict. Not only are we forcing people to tolerate the dispute, the dispute is escalating in its demensions.

When you analyze homicides and assaults between people who know one another well before the violence, you generally find they arise from petty origins; that is, they start with very small miniscule situations that are unattended. Failure to communicate represents the primary issue between people who have hostilities. If you can get the people to talk to one another, their perceptions of the conflict begin to have an effect on what the truth of the conflict is. More importantly, it provides a way for people to de-escalate the tensions and the hostilities in the disputes through communication, no matter what type of direct conflict mechanism is used. The tensions and hostilities in a dispute drop dramatically in the dispute handling, not in the resolution of the dispute. That's just a cherry on the ice cream. The real issue in the vast majority of disputes that enter the justice system that affects people with prior relationships is reducing the tension level and getting the people to some point of rationally deciding what they want from the conflict.

When I started Community Boards it really came from a somewhat negative notion. If the justice system in San Francisco hears less than 1% of the the cases coming into it, certainly community people could do no worse than attempting to hear cases at the neighbourhood level. We were interested in the direct development of a case referral process that did not use the existing justice system. Getting out of the existing justice system is a diversion process. Law enforcement must be involved by first doing a screening, doing a review and then doing a referral. That doesn't really affect at all the issue of forced tolerance.

We raised three or four basic questions in 1977 - 1978: Could you recruit people; if you recruited them, how would you train them; if you trained them, could you get disputants in the neighbourhood to give you the case; and if neighbourhood people give you the dispute or conflict, what would you do with it? We began by recruiting people we called panelists. We now recruit people not only as panelists but also as case developers, volunteers to go into people's homes and talk to them about the disputes. We train people in outreach skills to go to explain how to use the process

in churches, schools, and community organizations. We train prople as trainers in planning skills, evaluation skills and administrative skills. We are working in about 22 ethnically, racially and economically very diverse neighbourhoods of the city. We are at this point experimenting with setting up another justice model in San Francisco, not in competition with the existing justice system, just doing another range of work. We would refer to it as prevention. Perhaps some people from a social background might say early intervention. We are interested in getting a dispute early, not waiting until it gets to the point of needing a police officer, a prosecutor, a probation officer or a juvenile probation officer. To do that we have been doing a lot of education in the communities based on some important issues.

We are first and foremost saying that conflict has a positive value. In conflict, whether between people or internal, there is learning. The second thing we're communicating is that the peaceful expression of conflict between people is a positive value. The third is that voluntary resolution of conflict between people and neighbourhoods - not forced resolution ordered by a judge or determined by someone else - is a positive value; and finally, building on the diversity in the neighbourhood to make this happen for all people in a community regardless of their colour, their ethnic, racial or economic background is a positive value. Building on the positive value of diversity as opposed to looking at diversity as something that can separate is very important in neighbourhoods and communities that have different groups of people with different values, different languages and different customs.

In this process in the last two years Community Boards heard more cases at these neighbourhood panels than the San Francisco municipal court held jury trials for the whole course of a year. In the United States the jury system is a dying part of the justice process and most urban communities are experiencing fewer and fewer jury trials. Fewer and fewer people are needing one another in any context at all in an environment that's safe to communicate what the issue really is between them. One of our greatest problems has been the increase of professionalization of conflict. The only people who get to work on conflict in most urban and industrial societies are people who are professionally trained as a lawyer,

as a therapist or as a social worker.

Community Boards has probably trained about 1 200 people in San Francisco. These neighbourhood forums are probably the largest multi-ethnic, multi-racial organizations in the city and I think that the reason so many people are working is that they understand on a very basic level the range of work that is theirs to do; that is, if they don't do it, no one else will.

The Dear Abby case is not law enforcement work. This is peace-keeping work. That Dear Abby gives this woman no encouragement to see her neighbour is a reinforcement of the notion of exportation of conflict, not to the church, not to the Community Board, not to a mediator/conciliator in the neighbourhood but to a professional agency called the police department that is not going to do anything at all. Dear Abby escalates the conflict for this woman, making the conflict unmanageable.

This is one of the reasons there is so much tension in urban communities. There is no legitimate place to go with these kinds of disputes. Although they seem petty and silly, these are the disputes that get people hurt. Every police officer in every urban police department knows that the quickest way to get injured is to intervene in a domestic case. Squabbles between people who know one another have the highest incidence of police officer injury and fatality. The issue is to build a mechanism that would allow neighbours to handle conflicts early. In this process a lot of things happen.

It's an incredible process for learning. Community Boards is probably as relevant as an educational and training program and as a neighbourhood building and cohesion program as it is a conflict resolution program, but it could stand on its merits on any of those regards. In an evaluation that we are now doing, we are finding that the vast majority of people who volunteer for Community Boards have come into the city in the previous 36 months. They are relatively recent arrivals. One third of our members are people who have been in the city only one year, which reinforces for me something that I have often said. People are hungry to provide a civic service for their neighbourhood and in the process get connected to people in that neighbourhood. People are working together. That's one of the major reasons people give for doing this work. Secondly, it is a very bedrock form of education, a form of education where you don't have to go

to a university or a classroom or to a certified program. It's so simple you can train somebody yourself. I would like to describe the process to point out a very important piece in it.

It's basically a four-phase process. Parties will come into a hearing because the case developer talked with the people, saw all the disputants, explained the process and they were agreed to do it. They set up a date and time, organized the three to five panelists at that date and time and the disputants come, generally to a church or a community organization's offices, sometimes a school. We attempt to maximize the existing social institutions at the neighbourhood level, particularly schools and churches. They will come and be told the ground rules which are basically to be respectful of one another, to listen to one another and not to interrupt. Everybody is in the room at the same time. We do not use a mediation process of caucuses, the theory being that there is value in working it through all together, and I want to come back to that because it's a very important part of the second phase.

In the first phase you have a panel and you have the disputant and most of these people bring their friends or family, so you will have a fair number of people in the room. (Our largest dispute, a large complex dispute in the neighbourhood, had about 135 people.) The disputants talk directly to the panel. The first disputant will describe the nature of the problem, the second person will do the same and if there is a third disputant, he will do the same. The purpose of this process is not fact finding. Very little fact finding, in fact, takes place. As one who has done a considerable number of trials, I am absolutely amazed how facts are irrelevant to the resolution of the conflicts. Lawyers get trained in fact finding. It is, in fact, a lawyer's mystification of conflict. It has little to do with most conflict resolution work. This then really and truly is a socialization phase. What is happening here is that the panel says we are interested in you as people; we are interested in your conflict; talk to us, tell us what you think, tell us what is the major part of these issues.

The second phase is the most improtant phase for Community Boards. In this second phase, the panel will ask disputant one and disputant two to talk to one another directly, ignoring the panel. If it appears that

they are not hearing one another, are not able to communicate well, the panel will intervene to facilitate the dialogue. Disputant one tells disputant two why he is so angry, what it is that brought him here. The Dear Abby case is a perfect Community Board or neighbourhood case, but the most imperfect legal case. The woman who owns the dog would hear from the woman next door about what it means to her to have her clean, nicely mowed lawn have the dog's stuff on it periodically and what it does to her physically. She would go through the whole thing. In this expression of the conflict, one important thing happens. The hostilities diminish as the people begin to talk about why they are angry. It's not just a theoretical discussion; they are talking from their emotional side. As they express their emotions, anger begins to dissipate. It isn't any less real, just less violent. The primary reason a neighbourhood or community would want to build another mechanism is not exclusively the resolution of conflict; it's the reduction of the tensions and the hostilities in this conflict. It is the responsibility of the community and of the panel to make certain that this happens, that people dialogue and talk and reduce that conflict tension.

The responsibility for phases three and four lies with the disputants. The panel will say, "You are talking well enough with one another; you have taken responsibility to be here; you have made some progress in this dispute; where do you want to go with it? How much ownership are you prepared to take of this dispute for tomorrow, not today? What do you want it to look like tomorrow?"

In phase four, in about 92% of the cases there are written resolutions. After people have spent two hours screaming and yelling and arguing with one another, they want something out of this dispute. In phase four, these people would reach an agreement. Sometimes it's written, sometimes it's not. That's not the critical thing for the panel, but it may be the critical thing for the disputants. If it is, it will be written up, not as a legally binding agreement or contract but as a socially and morally binding agreement. It is one of the reasons why we encourage these panel sessions to be open. We really do want the disputants to bring their lovers, grandmothers, aunts, uncles, and ministers. The more people there are in the room, the greater the likelihood that the social relationships between

people are maximized, and the greater the likelihood that the disputants are going to live up to whatever they said they are going to do because everybody they trust, know and love is right in the room listening to them. And so it is not the legal coercive aspects; it's the moral and ethical aspects of people's social lives that, in fact, are maximized in this particular phase.

Community Boards has done a wide range of complex multi-party disputes in San Francisco. Police versus youth, neighbours versus high school open campus policy, residents opposed to the way youths are using miniparks, gays versus Hispanics, halfway house mentally ill seniors coming into the communities, radically dividing those communities. These neighbourhood forums are very effective, not only as conflict resolution mchanisms, but for airing the issues in a conflict.

We also developed a Community Board centre for policy and training, which is basically our experimental arm and our national arm. It's from that centre that we are doing work in several cities, and we have also started school projects. The experiment in school projects has been how and at what grade level we can teach young people conflict management skills and the resolution of conflict without adult intervention. For the last several years we have been training fourth and fifth graders in four quite diverse multi-ethnic, multi-racial elementary schools to do conflict management for themselves without any teacher or adult intervention at all. We give them about 20 hours of basic training; they have a tee shirt that says conflict manager, and they patrol the school yard. When there is a conflict, they directly intervene through a more simplified process with incredible results. It is really kind of a sweetheart project that will be expanded in 16 more elementary schools next year.

It seems to me that there is enough knowledge out there to strongly suggest that alternative processes are better than judicatory processes and court processes, that they are infinitely better for people on a human level, that they definitely avoid the Dear Abby responses, and that they more effectively use our public resources. We would be much better off, I think, if we were to think about conciliation programs, particularly neighbourhood ones, as being the primary justice system, and the traditional justice system as the alternative.

Appendix B

When you can't resolve your dispute in a mediated process, then you should seek a more coercive one. The more coercive one, being more expensive, more alienating, more time consuming, should in fact be the alternative. As a public policy, in our urban areas in particular, we ought to be supporting new mechanisms in schools, in communities, in places of work, for people to conciliate and to mediate conflicts without going to court and without using lawyers.

Mediation has a tendency at times to be faddish. It looks good but lacks root. The roots lie in the formation of public policies, and without that support, they are too episodic. They rely on individual skills or somebody's good idea, or on somebody who can raise money, or somebody who can get the judge to do the program. All of those things are invaluable in starting something but cannot be the basis upon which things are sustained. Public policies are the only way to make certain that mediation is bedrocked in Society by the turn of this century. It is our task to see that communicators, whether they are media people or policy people or Dear Abby, get educated about a better way of doing business.

I'm just overwhelmed with the range of work, particularly in the field of family divorce mediation and other specialities, that has taken place in Canada. I think it exceeds in terms of programatic emphases what's going on in the United States. I think also that we need to make certain that we teach our young people who will be the young adults of tomorrow to learn this stuff kindergarten through Grade 12 so that they understand communication skills and conciliation skills early on. Then when you start talking about this as a public policy, you are talking to an educated group of people. Ten years from now we can collectively build processes that are infinitely better for people all the way around. I think that we do best by making certain the field is improfessionalized - that we do this work professionally, but that it is not professionalized exclusively. It would be much better to make certain that people get these skills as cheaply and easily as possible and that we avoid forms of certification, licensing schemes and regulations. Otherwise it is likely that only the middle and upper-class people, and in most societies that means white people will get these skills. In a highly diverse multi-ethnic culture as United States is and Canada is too, I think, our strength

would be to make certain people had these skills as part of our social fabric; to professionalize them only to the degree that we don't have licensing schemes, that we assure ourselves that this won't be a fad, but that it will, in fact, be a public policy.

APPENDIX C

PUTTING JUSTICE BACK INTO THE SYSTEM

by Dave Worth

Many of you who have been involved in crime and justice things for years have talked to many victims and offenders, as I have, who before they got involved in crime in one way or the other thought that we had a justice system that worked. They had the idea that the police provided security and that the courts dispensed justice, but when their son or daughter got in trouble with the law, or when they became victims of a break and enter or something more serious, their experience with the system began to make them feel that something is wrong. "These people are not meeting our needs; they are against us," say the victims.

I don't know how you have found it, but I have found many people over the years who have really been radicalized by their experience of the system. All of a sudden they learn how the justice system in Canada really operates and that experience has not been positive. I think one example of that is the increasing volume of the victim movement in Canada. This summer there will probably be an association of victim self-help groups formed in Canada and then you will hear even more from those groups. We have already started to see how the political people are being pushed by the very vocal victim groups who are saying, "Pay attention to us! The justice system is supposed to meet our needs and it's not doing anything for us." We are going to hear more and more of that over the years.

As well as meeting people who are really disillusioned with the system, I have found over the last ten or so years that there are a lot of people out there working in the system as civil servants, working in private agencies, or as volunteers who are very seriously trying to make this system work. They are trying to do something that is of value to the people who come into contact with the system. So, it's not all a bad picture. Other people have decided to give up on this system, that there is nothing they can do with it so they are going to create, as Ray Shonholtz proposes, alternative systems that don't depend on the formal criminal law process or justice system in any way at all.

Appendix C

It seems to me that we are going to be stuck with the system we have probably well beyond my death, for 50 or maybe a hundred years. There are going to be changes (there always are) but we need creative efforts outside of the criminal justice system working on new ways of dealing with crime and conflict in the community. At the same time we need people slaving away inside the system, trying to push that system to inject new values, to put justice back into the system.

I am speaking primarily to those people who for whatever reason have decided that their job is to work within the system or to try to impact on that system directly. The task, in my opinion, is to change the experience that people have with the justice system, which is frustrating, which is an experience of powerlessness for both victims and offenders, and which really does nothing to deal with the fear which comes into their lives and their community because of crime. It seems to me that the way to change these people's experience is to make sure that the justice system meets the needs of all the people that are impacted by that system, rather than just meeting the needs of the State. I am not going to spend a lot of time critiquing the system, but it seems to me that the system as it exists now is primarily designed to meet its own needs--to meet the needs of the State rather than the needs of the citizens or of the people.

There are a few assumptions that I would like to lay out. We are interested in putting justice back into the system, but we are living in an unjust world and too often, I think, we ignore that fact when we are dealing with the situation between individuals. We think we can bring justice in that situation and ignore the wider injustices in our world. I come at this thing primarily from a biblical perspective,and one of the messages that we have very clearly is that you cannot have retributive justice without distributive justice. Those two kinds of justice are inextricably linked and too often I think we are a little bit glib in attempting to say that the criminal justice system can ensure that we have a just society. That's baloney. The criminal justice system can only work at justice in one narrow context. Only in part can it be an instrument of bringing about a wider kind ofjustice. We are living in an unjust world and as long as we live unjustly in a corporate sense, we will also have individual acts of injustice to each other.

Appendix C

The other assumption that I want to lay out is that justice is more than a right process. There is apparently a Latin saying that you bring about justice when you apply the right rules in the right way at the right time, and therefore, justice will come forth. That's the due process idea. As long as we give people their day in court, justice will be ensured. I don't believe it. Justice is not guaranteed by applying the right rules in the right way at the right time. Justice is something else. It is something more than just a mechanistic approach to life, to problems, to conflicts. It seems to me that justice is tied intimately and inextricably to human relationships and human needs, and until you address those human aspects of the conflicts, whatever they are, you cannot ensure that you have justice.

Those of us foolish enough to think that we can have an impact on a formal system which has incredible momentum in history need to make sure that the values, the things that we are trying to do when we impact on that system, flow out of a new look at the bottom line. So that we are not just tinkering with the outer edges, so that we are not just monkeying around with the peripherals, the first thing we need to do is to examine the basic paradigms. What we have now is the paradigm which says the thing that is wrong with crime is that a law has been broken, a law has been violated. The ultimate absurdity is that it is an offense against Regina, the queen; she has led a very rough life. That's a little bit facetious but the present paradigm says the thing that's wrong with crime is that a law has been broken and the appropriate response then is punishment, paying. (Some of you are familiar with Nils Christie, and we have a little publication available in which he has developed the idea of limits to pain, very interestingly.) We have this idea that when you break a law, the state comes in and does something to you. We don't hurt each other like we used to. We don't draw and quarter people; we don't whip them (not too much); we don't beat them. We have sanitized our pain. But unless we address that bottom paradigm, whatever else we do is really not going to make much difference.

I think we need to ask the question, what is another paradigm for crime? Maybe it's not a new paradigm; maybe it's an old paradigm which goes back to the concept of harm. What is wrong with crime? The thing that's

wrong with crime is that I hurt you; that people hurt each other, What do you do when somebody has been hurt? You try to heal it, to restore it, to make it right, to bring justice, if you will. So a new paradigm for crime is that crime equals harm or violence done, and the appropriate response is not punishment but restoration.

Since I listened to Ray Shonholtz the other night (speaking on "Building the Community's Justice System: Courts of First Resort"), I have been thinking about the idea that the goal of the mediation process is merely the reduction of the conflict, but I sort of wonder about that one. It seems to me that de-escalating the conflict is a worthy goal, and it seems to me that it is a way to go on towards healing and restoration and justice.

The final kind of assumption I wanted to lay out is that we are dealing here with some really old stuff. Since the beginning of human existence we have been trying to make sense out of fear and vulnerability, insecurity, and evil. They have been with us since we have been a human family and we have been trying to get a handle on that for a very long time. What happens when crime comes in, when we do violence to each other is that we become very aware of our ultimate insecurity. We go blithely along in life assuming that everything is fine and all of a sudden something comes in, boom, and it shatters our existence. This is how victims feel. It's very close to the kinds of things that happen when we have a death in the family, or some other grief or loss experience. It really cuts to the core of our existence.

One of the things that we are doing when we are responding to crime, it seems to me, is that we are trying to get a handle on life again. We are trying to get some answers. The interventions that we make, it seems to me, must deal with this question: How do we give people assurance or enough hope that they can go on living in the face of the violence that exists? Let's not be naive and assume that we will eliminate evil and crime from our communities. We haven't done it yet. We are very human, so it seems to me that when we are dealing with crime, we must not ignore this issue. Those are some assumptions that I make when I try to think about putting justice back into the system.

I think the basic point I want to make tonight is that if we are

working in the system, if we are trying to impact the system, the key issue is to try to address the need of the people the system impacts. Pretty simple point. Who are those people? There is the wider community, the victim, the offender, (and I am including with these people, their families, or their groups), the staff, or civil servants, and the state itself. It seems to me that if we are going to try to put justice back into the system, to help people experience justice when they come up against that system, we have got to try to address the needs of these groups of people.

What does it mean when we try to meet the needs of the community? Well, we have heard it in various forms here already. One of the problems with the community is that we have this court system. We set up our court rooms rather like a play with the judge up high and all the spectators ready to applaud. But we really don't want people in the courthouse. We really don't use the courthouse as a community meeting place anymore. The judges would rather not have the newspapers in there a lot of times probably. We are afraid, really, of the expression of the community's anger. One of the things that we have to do is to provide a place for the community to deal with their feelings which arise out of a crime. Now I am talking about whatever kind of crime you come up with. Mention vandalism to some people and they can get quite angry, because they probably had the experience. I don't know how it is with you but when I go out and speak to groups, I ask people, "How many of you have been victims of crime? How many of you have been offended?" Almost everybody has been a victim of some kind of crime. It touches all of us, and yet we don't have a way to sit down in the community to talk about that and to get angry about it. Where is our community forum for doing that?

Back in the old days, you know, they would haul the guy down under the oak tree and set him down in front of the elders there and the whole community would gather around. It would be a real mob scene, everyone getting into the act. We don't like that anymore; that's dangerous, you know. Everybody sit down and be quiet in the courtroom, please, and the professionals up here, the three lawyers and the judge, the defence and the crown will handle this thing. The rest of you please keep quiet; we don't want your opinion, we don't need your opinion. Well, where is the community going to do the talking about their feelings, about the pain and the suffering that arise from crime in the community? We have to find

a place. (Maybe it is okay to have people in the courtroom; that's a question in my mind.)

Where are people going to get their answers to the question, "Why does this kind of stuff happen?" That's a big question when you talk to victims. "Why, why me? What's the matter with this guy? Why did he do that?" We need answers in order to get handles on it, so that we can go on living. Without answers the anger goes on unresolved and festers and our insecurity manifests itself in more vindictive statements from the community. The cycle of-violence and vengeance goes on. It seems to me we need some kind of very symbolic and ritualistic way to deal with pain. What's wrong with court? Why can't court be a place to do that? Somehow we have to find that place in the community.

We also have to reintroduce the victim. You have heard this before in lots of ways. The victim has emotional needs, the victim has physical needs - money, compensation, whatever. Society somehow has to find a way to say directly to the victim, "We don't like what happened to you and we are going to do something about it; we're sorry that it happened." One of the things that energizes and drives the people who have founded the victims of violence groups is that fact that nobody cares, they think. When their daughter is murdered brutally, nobody cares. Nobody from the community or from the system says anything to them. Nobody tries to answer that 'why' question.

Recently I was talking to Don Sullivan, who is the founder of Victims of Violence. In his book he expresses the wish that somebody would have talked to him, anybody. If only Solicitor General Kaplan had written a letter and said, "Don Sullivan, we are sorry, we made a mistake. We should have been more concerned about that guy on parole." But nobody would take any responsibility and the message he got was that nobody cared. Three years later, Don is now getting to the place where the murder of his daughter is no longer the driving thing in his life. He is finally getting some healing on it. We have to find ways to speak directly to victims.

The offender is also a left-out party, just like the victim; we don't need him, really. He's an object just like the victim is. We do our monkey business around him and send him away. The offender is right out

of the picture, too. How are we going to bring the offender back in? It seems to me somehow we have to find a way for the offender to make a real and/or symbolic statement of sorrow and of repentance to the community and to the victim.

That word repentance is a biblical sort of word that we think means sorrow. It doesn't mean just sorrow; it means turning around, going in another direction. One of the things we have to learn to do with offenders is give them a way to go the other direction. We tend to take offenders, and we say, "You are a bad fellow, we don't like what you did and we don't even like you, so you are going to sit in the Waterloo County Detention Centre until we get you classified and then we are going to send you over here and you are just going to sit there and you are not going to do anything." If on the other hand, we say, "We don't like what you have done: we want you to show that you are ready to go another way and this is what you can do to go that way." That can take whatever guilt there is, whatever remorse there is and channel it in a positive direction rather than making it turn in on himself and turn into more anger and more hate and more brokenness. Somehow we have to give people handles, victims, offenders, and the community.

Now we are down to the staff of the criminal justice system, the people that are involved in the programs out in the communities. The key here is people. We can change all the systems, we can change all the laws and it won't make a hill of beans of difference unless the people who are working in the system have enough support, have enough trust and take enough risks to push the system to take risks in individual cases to do new things.

What do we really want them to do? I think the bottom line for me is illustrated by the debate that is coming up in the police powers debates. We have this incredible reform of the criminal law process going on in Canada now. They are turning out paper, 300 pages a day. They are starting the police powers process and one of the key questions in there for me is, what is a policeman? what is a constable? The law defines him as a peace officer but in reality police officers are law enforcement officers. You listen to probation officers and they say, "We would like to be counsellors and helpers, but we are supposed to be custodial people. We are supposed

to supervise, to enforce, to manage, We are supposed to keep track of these bodies here." Well, it seems to me we want peace officers: we don't want law enforcement officers. We've got to start giving brownie points to staff people for being peace officers, people who bring peace. There is lots of discretion cut there. I don't think we have to change any law, but we have to be giving them the support in the community and within the system. We have to say, use your discretion, do good things, put things back together, don't see yourself as a law enforcement officer who is bound by regulations and rules and conern for the caseload, for management. That to me is the bottom line issue for people within staff, for police, I suppose even for judges, crowns and defence people. Is the important thing the letter of the law or the spirit of the law? There is lots of room without changing a thing. I'm not saying there is no need for change of laws. Just make the climate in the community right, reenforce people. There are lots of good people out there.

I think if we have people who see their role as peace officers rather than law enforcement officers, they will be better able to deal with the people they come in contact with on a human level. They will be able to personalize crime, rather than always depersonalize it. That's one of the key things we believe the present paradigm says. A law has been broken so there is no need to deal with the human dynamics between people. You keep them apart, you don't let them talk; they will just muck the thing up.

If you are concerned about being a peace officer, then the goal is to put a human face on crime so that victims can meet the other party and discover that he is probably not as bad as their worst fears in most cases. Offenders can meet their victims and discover the same things. And the community can learn, because they are in on the process, that these people are not strange monsters; they come right out of the community, they are their neighbours, their sons and daughters, they are part of the community.

The last one is the state and I don't know what to do with the state. I don't know quite how you meet the interest of the state while you are trying to meet the interest of the citizen. Is that being too nasty? There is a conflict there. There is this incredible thing moving along, but we are stuck with it. It is a reality and we better discover some

ways to meet the interest of the state. I'm not sure that I've got handles on what is the interest of the state yet. It seems to me that the state must be seen to be part of the mechanism that is keeping control of things. The state wants to be in control. The state has a monopoly on violence; they are the only ones that can do violence legally. Maybe we can work at the interest of the state by helping the state to see that its interest, its need to be seen to be providing answers and security, law and order, can be fulfilled by meeting the needs of the people, by allowing a place for expression of anger and frustration, by moving away from brokenness towards healing. I don't know; I need some help on what to do with the interest of the state.

It seems to me for the foreseeable future we will continue to have a criminal law process that is basically owned, operated and functioning for the benefit of the state. We will also have all kinds of creative things happening out there on the edges. I think we are going to have these two tracks at least going around for awhile. Who knows what is going to happen down the road? For now, we're stuck with what we have and we need to find ways to transform the approach to crime and justice by meeting the needs of the people involved - the community, the victim, the offender, the people within the system and somehow the state itself.

What I am going to do now is ask you to put all this into practice. I am going to give you a taste (and some of you have been through this process before) of a real live case. I have the person's permission to use his case, and I am going to ask you to get into little groups and come up with a sentence, plan or whatever you want to call it, that will bring justice into this situation by meeting the needs of all the parties involved. The man's name is Leo Johnson, who was an upstanding history professor at the University of Waterloo, top in his field in Canada. He is no longer there; he has been fired. He was an upstanding community citizen, upstanding family man in the community. He and his wife took in some foster children. One day the community is shocked to discover that he has been charged with sexually molesting those foster children and about 8 or 10 other children in the neighbourhood. Eventually he is convicted on eight or ten counts and the sentencing is tomorrow. A few other things. We have here the school - all these kids went to the same school - which has been bent out

of shape, the teachers, neighbours and the parents. One father was out with a shotgun. We've got the system people. The judge is probably the best judge you can have on a case like this. He is really sincere and is going to do his best. What else have we got? We've got Leo, we have the children - the foster kids have been shipped off by the CAS - and we have his wife; she disappears. I want you to come up with the plan, the sentence. You all know what's available out there. This is Kitchener-Waterloo and we have a community resource centre, a community halfway house there, we've got lots of counsellors, we have a VORP project, we've got community mediation, we've got a jail. If you need to know what else we have in the community, let me know, but don't be bothered by reality here; excuse,me, in Canada, that's not allowed at the present, at least not legally. Just spend a few minutes coming up with a decision.

APPENDIX D

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Appendix F

Summary of Participating Programs

Workshop participants were invited to complete a form to provide a brief description of their respective programs. This information is arranged according to the location of the program. No attempt has been made to supplement the information that was received from the forms.

YOUTH DIVERSION PROGRAM

P.O. Box 7392, West End P.O.
St. John's, Newfoundland
A1E 3Y5
Phone: (709) 753-2212

Contact person: Margaret Harris

Operational status: began in May, 1979
agency operated

Sponsored and funded by: Department of Social Services

Case types or criteria: first time offenders under age 17 of a minor criminal offense; pre-charge program

Annual caseload: approximately 550

Staff: 2 social workers; 1 clerical person

Volunteers: 20 as mediators, supervising educational sessions, organizing community services and activities for youth; follow-up

Annual budget: not available

ASSOCIATION OF FAMILY LIFE

5599 Fenwick Street
Halifax, Nova Scotia
B3H 1R2
Phone: (902) 422-6953

Contact person: Joyce Halpern

Funding sources: Municipalities, province, United Way; fee for service

Operational status: expected to begin fall of 1984; agency operated

Case types or criteria: Family/divorce mediation

Volunteers: Board and support services

DEPARTMENT OF YOUTH PROTECTION, VILLE MARIE SOCIAL SERVICE CENTRE

4515 St. Catherine Street West
Westmount, Quebec
H3Z 1R9
Phone: (514) 989-1781

Contact person: Leith Hamilton

Operational status: currently operational
agency operated

Sponsored by: Provincial government

Case types or criteria: Probation/court services: pre-and post-adjudication

Annual caseload: 2,000 - 3,000

Staff: 13

Volunteers: contract with community board groups

Annual budget: no information

ENTENTE PROGRAM - WEST ISLAND YMCA

94 Douglas Shand
Pointe Claire, Quebec
H9R 2A8
Phone: (514) 694-3671 or 695-9561

Contact person: Brenda Wisenthal, co-ordinator
Susan Ross, field worker

Operational status: began in 1980
agency operated

Sponsored by: YMCA - West Island

Funding sources: YMCA - Youth Protection of Ville Marie Service Centre;
Consultation Centre of the Solicitor General of Canada;
Ministry of Social Affairs, Quebec

Case types or criteria: community restitution/mediation for juveniles

Annual caseload: 100

Staff: 2 part-time

Volunteers: used as mediators and to work with youths doing community restitution on a one-to-one basis

Annual budget: $20,000

CENTRE D'ANIMATION DE GATINEAU (CADG)

6 Rue Gauthier, # 5
Hull, Quebec
J8X 1A8
Phone: (819) 777-2171

Contact person: Luc Chamberlain

Operational status: planned to begin by the end of 1984

Funding sources: seeking provincial and federal government funding

Case types or criteria: Young offenders; victims

FAMILY REFERRAL AND CONCILIATION SERVICE

469 Montreal St., P.O. Box 981
Kingston, Ontario
K7L 4X8
Phone: (613) 547-2228 or 547-2223

Contact person: Mollie Knowles

Operational status: currently operational
agency operated

Funding sources: contract with Attorney General of Ontario

Case types or criteria: adults: family problems, separation, assaults, disputes over custody, access, support, division of assets

Annual caseload: 866 new cases

Staff: 2 mediators
1 office manager

Volunteers: some

Annual budget: $92,400

DIVORCE MEDIATION SERVICES

P.O. Box 1808
Bancroft, Ontario.
K0L 1C0
Phone: (613) 332-1821

Contact person: Wolfgang J. Pusztay

Operational status: began May 4, 1984
private practice

Case types or criteria: divorcing couples

Staff: 1

COMMUNITY ORIENTED SENTENCING PROGRAM

85 Brige Street East,
Belleville, Ontario
K8N 1L9
Phone: (613) 966-7410

Contact person: Henry Grayman

Operational status: began in 1976
agency operated

Sponsored by: Ontario Ministry of Correctional Services

Funded by: Ontario Ministry of Community and Social Services;
United Way; Ministry of Recreation and Leisure

Case types and criteria: criminal code or Young Offenders Act

Annual caseload: 300

Staff: 2 full-time; 1 four-fifths time; 2 one-fifth time

Volunteers: 40

Annual budget: $75,000

Services offered: Community service orders - juvenile and adult

Victim/offender reconciliation - juvenile and adult

Restitution - juvenile and adult

Pre-charge diversion - juvenile only

McWHINNEY, METCALFE & ASSOCIATES

180 Bloor Street West, Suite 1200
Toronto, Ontario.
M5S 2V6
Phone: (416) 968-3262

Contact person: Robert McWhinney

Operational status: began in 1978
private practice

Case types or criteria: family therapy, marital therapy, family mediation, child custody assessment, individual therapy; training; consultation

DR. HOWARD B. WAISER

6013 Yonge Street, # 309
Willowdale, Ontario
M2M 3W2
Phone: (416) 222-6040

Contact person: Dr. H.B. Waiser

Operational status: currently operational
private practice

VICTIM OFFENDER RECONCILIATION PROGRAM

36 Wyndham Street South,
Guelph, Ontario.
N1H 7J5
Phone: (519) 821-1602

Contact person: Ms. Iris Lambert

Operational status: began January, 1982
agency operated

Funding sources: Ministry of Correctional Services

Case types or criteria: non-violent offenses; first or second time offenders; property offenses

Annual caseload: 25 - 30 cases

Staff: 1 part-time

Volunteers: 7

Annual budget: no information

COMMUNITY DISPOSITION PROGRAM

124 James Street South
Hamilton, Ontario
Phone: (416) 545-4040

Contact person: Terry McDonald

Operational status: currently operational
agency operated

Funding sources: Ministry of Social Services

Case types or criteria: juveniles found guilty in youth court of criminal offense and ordered to pay restitution or perform community service victim/offender reconciliation

Annual caseload: 100 - 150

Staff: 2 full-time

Volunteers: occasional use

VICTIM OFFENDER RECONCILIATION PROGRAM

298 Frederick Street,
Kitchener, Ontario.
N2H 2N5
Phone: (519) 744-6549

Contact person: Norm Warren

Operational status: began May, 1974
agency operated

Funding sources: Ministry of Correctional Services,
Province of Ontario

Case types or criteria: post-conviction; victim/offender
mediation

Annual caseload: 80 new cases in Kitchener

40 new cases in Cambridge

Staff: 1 full-time (Kitchener)

1 part-time (Cambridge)

1 part-time receptionist-secretary

Volunteers: for mediation

Annual budget: $40,000

VICTIM OFFENDER RECONCILIATION PROGRAM

North Bay, Ontario
Phone: (705) 472-6515

Contact person: John Coffman

Operational status: planned to begin in October, 1984
agency operated

Sponsored by: Family Life Centre

Funding sources: Mennonite Central Committee (partial)

Case types or criteria: property offenses; juvenile offenses

Annual caseload: 20 - 30

Staff: 1 co-ordinator

1 half-time mediator

Annual budget: $58,000

VICTIM OFFENDER RECONCILIATION PROGRAM

1305 Sheridan Mall Parkway, Suite 416,
Pickering, Ontario.
L1V 3P2
Phone: (416) 683-0373

Contact person: Helen Pugliese

Operational status: began in December, 1981
agency operated

Sponsored by: Social Planning Council of Ajax/Pickering

Funding sources: Ministry of Correctional Services

Case types or criteria: pre- and post-sentence referrals by judges or probation officers for property offenses, minor assaults, disturbances by adults

Annual caseload: 50

Staff: 1 full-time co-ordinator

Volunteers: 8

Annual budget: $29,000

MEDIATION SERVICES

202 - 818 Portage Avenue
Winnipeg, Manitoba
R3G 0N4
Phone: (204) 783-8989

Contact person: Ray Friesen

Operational status: began in April, 1979
Criminal Court Diversion added in July, 1983

Funding sources: Mennonite Central Committee

Case types or criteria: community mediation; Criminal Court diversion for theft, mischief, wilful damage; assault

Annual caseload: approximately 250

Staff: 1 full-time; will add 1 more

Volunteers: filled placements for students; community volunteers

Annual budget: $35,000 - $40,000

SASKATOON MEDIATION SERVICES

300 - 241 Second Avenue South,
Saskatoon, Saskatchewan
S7K 1K8
Phone: (306) 244-0440

Contact person: Ken Funk

Operational status: began in November, 1983

Funding sources: Mennonite Central Committee(Sask.)
John Howard Society (Sask.)

Case types or criteria: adult mediation; diversion - selected criminal complaints

Annual caseload: 360 cases

Staff: 1½

Volunteers: 5 - 8

Annual budget: $25,000

McBEAN, BECKER & COCHARD

c/o 9915 - 142nd Street,
Edmonton, Alberta

Contact person: Renee Cochard, Ruth Becker or Farrel Shadlyn

Operational status: began January, 1984
private practice

Case types or criteria: family mediation

Staff: 3

Volunteers: none at this time

WESTCOAST MEDIATION CENTRE FOR DISPUTE RESOLUTION ASSOCIATION

208 - 1242 Robson Street
Vancouver, B.C.
V6E 1C1
Phone: (604) 683-4176

Contact person: Marje Burdine or Rob Hughes

Operational status: incorporated in June, 1984
agency operated

Funding sources: seeking funding

VICTIM OFFENDER RECONCILIATION PROGRAM

4500 - 202 Street,
Langley, B.C.
V3A 6M7
Phone: (604) 530-0333 (office)
533-1811 (residence)

Contact person: Dave Gustafson

Operational status: began January, 1982
agency operated

Sponsored and funded by: Langley Mennonite Fellowship (Church)

Case types or criteria: primarily pre-trial diversion;
increasing numbers of post-trial cases;
RCMP now refer directly in appropriate
cases, usually first offense or
property cases

Annual caseload: 70 - 100

Staff: 2 one-quarter time each

Volunteers: mediation; program planning and development

Annual budget: $18,000 - $20,000

COMMUNITY BOARDS PROGRAM (A)

COMMUNITY CENTER FOR POLICY AND TRAINING (B)

149 Ninth Street,
San Francisco, California 94103
U.S.A.
Phone: (415) 552-1250

Contact persons: (A) Ray Shonholtz, President

(B) Terry Amsler, Program Development Director

Operational status: began in 1977
community organization operated

Funding sources: private foundations

Case types or criteria: wide range of individual and community-wide issues; noise, property damage, money disputes, fights, family issues, landlord/tenant

Annual caseload: 600 in 1983

Staff: 6 neighbourhood offices with 1½ to 2 staff per office plus some "central" staff support

Volunteers: as conciliators, case developers, outreach workers, trainers, planners, follow-up workers, some with governance responsibilities

LEWIS MEDIATION SERVICE

P.O. Box 113
Lowville, New York 13367-0113
U.S.A.
Phone: (315) 376-8202

Contact person: Richard Pernell

Operational status: began April 1, 1983
agency operated

Funding sources: Unified Court System of New York State;
Lewis County Opportunities

Case types or criteria: civil and criminal (except felony)

Annual caseload: 100 proposed

Staff: 1 director

Volunteers: 6 mediators

Annual budget: $ 34,000 (FY 1983-84)

$ 44,000 (FY 1984-85)

50% from Unified Court System and 50% in-kind services and local cash match

OTHER ORGANIZATIONS

JOHN HOWARD SOCIETY OF CANADA

55 Parkdale Avenue
Ottawa, Ontario.
K1Y 1E5
Phone: (613) 728-1865

Contact person: John Walker

Operational status: began April 15, 1984
agency operated

Funding sources: Solicitor General of Canada

Case types or criteria: provides information on implementing Young Offenders Act, program development and public education to John Howard Societies across Canada

Annual caseload: JHS across Canada

Staff: 1 worker

JUSTICE INSTITUTE OF BRITISH COLUMBIA

4180 West 4th Avenue
Vancouver, B.C.
V6R 2Y1
Phone: (604) 228-9771, Local 224

Contact person: Marjorie Burdine

Operational status: currently operational
agency operated

Funding sources: Ministey of Attorney General (core funding)
Solicitor General of Canada (grant)

Case types or criteria: provides training in mediation skills; no direct service